

IN THE SENATE OF THE UNITED STATES.

APRIL 12, 1858.—Agreed to, and ordered to be printed.

Mr. MALLORY submitted the following

REPORT.

The Committee on Claims, to whom was referred the petition of the widow of Rinaldo Johnson, have had the same under consideration, and thereupon report:

The memorial, a copy of which is hereunto annexed, alleges that, in the month of June, 1814, a body of British troops, on a predatory excursion, ascended the river Patuxent, Maryland; that, on approaching Magruder's warehouse, they were fired upon by an American force stationed in and about it; that this force retreated, and the British landed from their boats and burned the warehouse with all it contained, including one hundred hogsheads of tobacco, the property of Rinaldo Johnson; that the warehouse was thus burned because it had been thus occupied by the Americans; and the prayer is, that the government of the United States will pay for the tobacco.

Before referring to the proof submitted in support of the memorial, your committee deem it proper to advert to the principles of public law which the claim involves; to the congressional and departmental action heretofore had in such cases; and particularly to the case of — Catlett, claiming indemnity for tobacco destroyed at the same time in "*Magruder's warehouse*."

Upon the termination of the war of 1812, Congress, to provide for the payment of private property taken for the public use, or destroyed by the enemy because of its use and occupation by the United States, passed the act of April 9, 1816.—(See Statutes at Large, vol. —, p. —.)

Section 9 provided "that any person who, in the time aforesaid, has sustained damage by the destruction of his or her house or building, by the enemy, while the same was occupied as a military deposit, under the authority of an officer or agent of the United States, shall be allowed and paid the amount of such damage: *Provided*, it shall appear that such occupation was the cause of its destruction."

Section 15 provided "that no claim authorized by this act shall be allowed or paid unless the same shall be exhibited within two years from the passing hereof."

The commissioner appointed to determine the claims to be presented

under this act at once entered upon his duties; and the President of the United States, through the Secretary of War, instructed him as to the construction of the ninth section, above cited, as follows:—(See State Papers, vol. Claims; pp. 491, 691.)

“The ninth section of the act extends only to cases of destruction of property by the enemy which are justifiable by the laws of civilized warfare. The occupation of houses or buildings as places of military deposit, or by an armed force, must be continued up to the time of the destruction.

“That the occupation of houses or buildings by an armed force, for a night, upon a march, is not within the meaning of the said section, unless within the immediate presence of the enemy.

“That no compensation, by way of interest, rent, or damage, can be allowed under the act for the time which elapses between the destruction of the property and the decision of the commissioner.

“That the act does not extend to the case of consequential injury resulting from the destruction of houses or buildings under the ninth section.

“No compensation can therefore be allowed for the destruction of houses or buildings not occupied as a military deposit or by military force.”

The commissioner had entered upon his duties about the first of June, 1816; the President's instructions are dated 21st October, 1816, and on the 1st of November following he directed the commissioner to suspend all decisions under this ninth section until further advised; and on the 6th of December, 1816, the President sent to Congress the following special message:

“To the Senate and House of Representatives of the United States:

“The ninth section of the act passed at the last session of Congress ‘to authorize the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes,’ having received a construction giving it a scope of great and uncertain extent, I thought it proper that proceedings relative to claims under that part of the act should be suspended until Congress should have an opportunity of defining, more precisely, the cases contemplated by them. With that view I now recommend the subject to their consideration. They will have an opportunity, at the same time, of considering how far the provisions of the act may be rendered more clear and precise in their import.

“JAMES MADISON.”

(See State Papers, vol. Claims, p. 484.)

This message was referred to the House Committee on Claims, who reported (17th December, 1816,) “that the committee were decidedly of the opinion that the commissioner appointed to carry the act into effect, had given, and was still disposed to give to the law an extension of construction not contemplated by Congress at the time of its passage, and not warranted by its object.” They notice cases of unwarranted adjudications, and lay down the rule that “a mere temporary occupation of the house for one night and a part of the next day

by one or two companies of militia, cannot impart to the house even the character of barracks, but much less, that of a military deposit."

These proceedings resulted in the passage of the act of 1817, the first section of which provided, "that the ninth section of the act entitled 'An act authorizing the payment for property lost, captured, or destroyed by the enemy while in the military service of the United States, and for other purposes,' passed on the 9th of April, 1816, shall be construed to extend only to houses or other buildings occupied by an order of an officer or agent of the United States, as a place of deposit for military or naval stores, or as barracks for the military forces of the United States."

The expediency of continuing in force these two acts of 1816-'17 was submitted to the House Committee on Claims, who reported against it, principally on the ground that frauds had been committed under them; and they were allowed to expire on the 18th April, 1818, the undetermined cases under them being referred to the Third Auditor.—(See State Papers, vol. Claims, p. 590.)

By the act of 3d March, 1825, claimants who had presented their claims under the provisions of the acts of 1816-'17, but who had failed to obtain final action thereon, were authorized to present them to the Third Auditor, who was authorized to adjudicate and certify them for payment *under the provisions of said acts*.

Your committee have made special reference to these acts, not only because those of 1816-'17 were passed while the evils they were designed to relieve were fresh in the memory of Congress, but because they contain all the relief which Congress deemed it just to afford.

Throughout the fourteenth and fifteenth Congresses numerous applications were made for indemnity for property destroyed by the enemy, and the general views of Congress upon all such cases were frequently and unequivocally expressed.

Until 1821 the Committee on Claims of the House of Representatives had regarded the military occupation of houses, *up to the time of their destruction by the enemy*, as bringing them within the provisions of the act of 1816; but in that year, upon a full discussion of the principles involved, the House decided that the occupation of a house as barracks, even up to the time of its destruction, did not justify its destruction by the rules of civilized warfare, and therefore did not come within the law, except in cases where the destruction had been found necessary to dislodge the enemy.

This was found to have been in accordance with the usage during the late wars in Europe.

Not even public barracks were deemed legitimate objects of destruction after being evacuated.—(State Papers, vol. Claims, p. 815, 816.)

Congress intended to provide payment for such losses only as were known to have happened according to the rules of civilized warfare, and for no others.—(State Papers, vol. Claims, p. 796.)

As one party would not have a right to put a prisoner to death on the ground that he had fought, or that when exchanged he might fight again, so, he would not have the right to destroy private property either because it had been used or might again be used in the progress of the war.—(State Papers, vol. Claims, p. 796.)

From Reports of Committees of the Fourteenth Congress.

The course heretofore pursued by Congress inculcates that indemnity is due to all those whose losses have arisen from the acts of our own government or those acting under its authority: while losses produced by the conduct of the enemy are to be classed under the unavoidable calamities of war, and do not entitle the sufferers to indemnification from government.—(State Papers, vol. Claims, p. 442.)

FROM REPORTS OF SENATE COMMITTEES.

The utmost extent to which Congress can safely go is to protect individuals against its own acts and their consequences. If a house be occupied by the troops of the country for military operations, it is thereby placed on a footing of any other military position, and may be justifiably destroyed by the enemy.—(23d Cong., 1st sess., Rep. No. 355.)

Where a building is occupied by our troops, who are dislodged by the enemy, and the latter take possession of it, and after occupying it for a time, on evacuating, destroy it, it comes within the principles established in similar cases.—(26th Cong., 1st sess., R. 146.)

The above opinion is reversed. The principles recognized in the general legislation of Congress for the adjustment of war claims and the regulations for carrying those laws into effect, should be adhered to.—(26th Cong., 1st sess., No. 350.)

The liability of the government in such cases was ably discussed by Mr. Silas Wright, on the presentation of the petition of—(see 27th Cong., 2d sess., Rep. 272.)

He says, “the rules of action in the decisions of these claims should be the general legislation and the allowances under it; to act otherwise would be to unsettle every case of a claim which has been heretofore settled under these laws, and by taking the most liberal and latitudinous private law which has been passed as the settled rule and established precedent, invite all those whose claims have been rejected or in whose favor partial awards have been made to come again to Congress for a further allowance.

The principles established in the general legislation of the country, and to which the committee have determined to adhere in reference to these “war claims” are the following:

1st. The building must have been in the actual occupancy of the United States.

2d. It must have been so occupied “as a place of deposit for military or naval stores,” “or as barracks for the military forces of the United States.”

3d. The occupancy must have been by an order of an officer or agent of the United States.

4th. The occupancy must have continued to the time of the destruction.

5th. Such occupation must have been the cause of the destruction.

Each and every of these facts must be fully sustained, in order to

bring any case within the rule, the absence of any one of them being decisive against it.

These principles cannot be safely extended as general principles, applicable to a state of war. The great mass of the claims of this character, arising during the war of 1812, have been settled, and finally disposed of under these laws, and upon these principles; and now to extend the rules of allowance to those who have neglected to avail themselves of the general legislation, and choose to rest upon the sympathy of Congress and special favor, would be most manifestly unjust. Great and salutary principles of general legislation for the settlement of classes of claims, are not to be varied or construed by occasional acts of a private character, in which a strict adherence to them may have been relaxed."

Personal Property.

The general principles settled by the legislation of Congress allow compensation for buildings destroyed by the enemy, when their military occupation had drawn upon them the legitimate vengeance of the enemy, and caused their destruction; but these principles do not authorize compensation for personal property destroyed in them.

The reason is, that personal property could be removed to a place of safety, when not impressed or taken by public authority for the use or subsistence of the army; if so impressed or taken therefor, it was to be paid for, and not otherwise.

This is the rule laid down in the 5th section of the act of 1816, and it is the only provision of public law applicable to this class of cases.

These are the principles upon which Congress has intended to act.

Special instances of the relaxation of these principles, prescribed in the laws or special acts of Congress to cover a single claim, and based upon a particular state of facts, and referred to at the time of the passage of the special act, should neither be considered as an abandonment by the government of those general principles upon which its liability is to depend, nor as an evidence of an intention on the part of Congress to extend those principles of liability as to that class of claims generally.—(Senate, 27th Cong., 2d sess., R. No. 115.)

Your committee have thus briefly adverted to the principles and practice which the government has uniformly adopted and pursued with regard to this class of claims, quoting from a few only of the numerous reports of committees of both Houses of Congress, wherein these principles have been announced.

At the first session of the twenty-third Congress, the Committee on Claims of the House of Representatives appear to have been instructed by a resolution to inquire into the expediency of making further provision for extending, and the more effectually carrying into effect the provisions of the act of the 9th of April, 1816, before mentioned; and on the 16th of March, 1832, the committee made a report, (No. 386,) concluding with a resolution as follows:

"*Resolved*, That it is inexpedient to legislate on the matter contained in the resolution."

Other parties having tobacco in Magruder's warehouse, with that of

the petitioner, when it was destroyed have, from time to time (running back twenty-four years) appealed to Congress, as in this case, to pay for it; and the allegations and proofs by them presented in support of their claims, which rest upon the precise grounds maintained by the petitioner, may be considered in connexion with the proofs he presents.

With reference to these cases your committee will advert first to that of *Charles J. Catlett*, the most prominent, perhaps, of them all. This claim was for tobacco burnt by the British:

149 hogsheads at Nottingham.

115 hogsheads at Magruder's warehouse.

4 hogsheads at Cedar Point.

Total 268 hogsheads, at \$96 90 $\frac{3}{4}$ = \$25,970 27.

No attempt to procure payment of this claim before the United States commissioner under the acts of 1816 and 1817, nor before the Third Auditor to whom such war claims were subsequently referred; nor does any movement to recover seem to have been made until the second session of the twenty-third Congress, (January 13, 1835,) when a bill for his relief was reported from the Committee on Finance of the Senate, accompanied by a report which was ordered to be printed. This report recognized and admitted that a party of Maryland troops found shelter behind Magruder's warehouse, from whence they fired upon the British advancing in boats; and that the Maryland troops also made a breathwork of some of the tobacco warehoused at Nottingham (seven miles from Magruder's) for their defence; that the burning of Magruder's warehouse, and the "abduction of the tobacco" by the British from Nottingham, seem to have resulted from these movements of the American troops.

The bill to which this report refers directed the proper accounting officers of the treasury to *settle and allow*, upon just and equitable principles, the claim of Charles J. Catlett, for tobacco which belonged to him at Magruder's warehouse, Cedar Point warehouse and Nottingham warehouse, all in the State of Maryland, and was lost, captured or destroyed by the British or American troops during the last war between the United State and Great Britain; and prescribed that the allowance should be carried to the credit of the said Charles J. Catlett, on the books of the treasury.

On the 19th February, 1835, this bill appears to have been rejected, and on the following day a reconsideration of the vote was moved, and the motion was laid on the table.

At the succeeding session another bill for the relief of Catlett was reported from the Committee on Finance of the Senate, in precisely the same form as the one just noticed, unaccompanied by a written report.

On the 29th March, 1836, it was considered in Committee of the Whole and laid on the table, where it rested until the 24th June following, when it was taken up, amended and passed. The amendment consisted in substituting for the words "and allow upon just and equitable principles," these: "*upon the principles of the acts of Congress of the 9th April, 1816 and 3d March, 1817.*"

With this bill Catlett went before the treasury officers with the proof of his losses, and they rejected his claim in toto. Mr. Hagner, Third Auditor, and Mr. Parris, Comptroller.

Mr. Catlett, however, obtained presidential interference, as will appear by the following

Order of the President.

Let Mr. Catlett procure a statement of the amount of his debt to the government. Let him have a conjectural statement made of the value of the tobacco—

First, at the war price ;

Second, at the peace price ;

and let these be reported to me.

J. TYLER.

Mr. Hagner will make the statement as early as possible.

Endorsed: "Instructions of the President of the United States, September, 1841."

In obedience to this command the report was made, whereupon the President issued the following :

No. 7.

SEPTEMBER 23, 1841.

The President has examined the claim of Charles J. Catlett, under the special act passed for his relief ; and believing it to be a meritorious claim, directs the accounting officers to re-examine the case, and, if they cannot admit the claim, to report the case especially to him, with their reasons for their disallowance. It is desirable that their action should be had as soon as practicable.

Endorsed: "Additional instructions of the President of the United States, 23d September, 1841."

Upon this command the Third Auditor did re-examine and report upon the case, re-affirming his previous decision, and concluding as follows :

Unable to perceive that the accounting officers possess any power, under the special act for Mr. Catlett's relief, to settle his claim upon any other principles than those of the laws of the 9th April, 1816, and 3d March, 1817, therein mentioned ; or that, upon the principles of those laws, as the same have been at all times construed in acting under them, any portion of the claim can be allowed by the accounting officers, I am constrained by a sense of duty, without making an allowance on it, to again report the case to the Second Comptroller for his decision thereon.

PETER HAGNER, *Auditor.*

ALBION K. PARRIS, Esq.,
Second Comptroller.

In his examination, the proof submitted by Catlett with reference to the burning of Magruder's warehouse is thus stated :

As to 115 hogsheads of tobacco at Magruder's, the statement in relation thereto, in General Biscoe's second letter to the claimant, is as follows : " You request information on the subject of the defence of Magruder's warehouse, in June, 1814, by a detachment of militia acting under my orders. In reply, I have to state that the captain in command reported to me his rencounter with the enemy at that place. He stated that, on the near approach of the British barges (said to be) under the command of Commodore Barry and Colonel Malcomb, of marines, he posted his men behind the warehouses, situated within thirty yards of the shore ; and that, so soon as his fire of musketry could be deemed effectual, he commenced, and continued to do so for an hour or two, being under cover of the warehouses. Finally his ammunition became expended, and he was compelled to retire. The enemy then landed and set fire to the warehouses, which were burnt." The remaining part of the statement has been previously cited.

Jesse Selby, in a deposition dated December 20, 1833, has testified that he was stationed at Magruder's warehouse, on the Patuxent river, in June, 1814, in a company of Maryland militia, commanded by Captain Joshua Naylor ; and that the warehouse, he verily believes, was burnt in consequence of the said company being there, and the said warehouse affording protection, and being occupied by them ; also, that Captain Naylor died in the year 1825. And, in the afore-said deposition of James Baden, he has testified that Captain Naylor's company of Maryland militia was stationed behind Magruder's warehouse, and as soon as the British barges came within gunshot commenced firing upon them, and continued until the ammunition was expended ; that they then retreated, and the enemy immediately landed, set fire to the warehouse, and burnt all the tobacco within it ; that this was on the 17th June, 1814, the day the militia prevented them from coming to Nottingham, which probably prevented that warehouse from sharing the same fate ; that the witness was inspector at Magruder's warehouse, but commanded a company on that day at Nottingham ; that Charles J. Catlett was a large owner of tobacco, and a very heavy sufferer ; that the witness was appointed inspector in January, 1813, at Magruder's warehouse ; and that, previous to his appointment, James Naylor was the inspector.

Your committee will now state substantially the testimony filed in support of this claim, omitting such as has previously been referred to in considering the claim of Catlett.

Affidavit of General Biscoe.

General Biscoe says : " A company of militia acting under my orders as major of the 17th regiment, were posted at Magruder's warehouse for its defence, and when the British barges ascended the river, on or about the 17th of June, 1814, so soon as they were discovered by Captain Joshua Naylor (the captain in command,) to be in reach of his fire, he commenced firing upon them from behind said warehouse,

and continued to do so until his ammunition was expended. The enemy immediately landed and the militia retreated. The enemy then burned the warehouses with all the tobacco contained therein."

General Biscoe further states that he always understood that Rinaldo Johnson had a quantity of tobacco burned in the warehouse, and that from his place of residence at Nottingham, eight miles off, he discovered the warehouses to be on fire.

Affidavit of James Baden.

Mr. Baden says that on the 17th June, 1814, Magruder's warehouse, "having been occupied a short time previously by the American forces," was burnt by the British. That Rinaldo Johnson had eighty hogsheads of tobacco in it, which was also burned, and that "the burning of said warehouse was in consequence of such previous military occupation by the American forces aforesaid."

Second affidavit of Mr. Baden.

STATE OF MARYLAND, *Prince George's county, to-wit:*

Peronsally appeared James Baden of the county aforesaid, before the subscriber, one of the State of Maryland justices of the peace, for Prince George's county, aforesaid, and being sworn on the Holy Evangely of Almighty God, deposeth and sayeth, that he was a qualified inspector of tobacco for Magruder's warehouse in Prince George's county aforesaid, on the Patuxent river, for the years 1813, 1814 and 1815, and in March, 1813; when he took possession of said warehouse, Rinaldo Johnson, sr., a large planter in Prince George's county, had stored in said warehouse sixty-eight hogsheads of tobacco, all of which belonged to said Rinaldo Johnson, senior. This deponent is able to speak positively of this number of hogsheads from an examination of a paper (intestive—now in his possession, and a copy of which is herewith filed, marked A,) which shows the condition of the warehouse and the amount of tobacco stored in said warehouse and to whom the tobacco belonged. This deponent further states that each hogshead averaged at least one thousand pounds. That the tobacco thus stored by the said Johnson was destroyed when the warehouses at Magruder's were burned by the naval forces of Great Britain, in June, 1814. This deponent further states that the inspection books of said warehouse were burned when the British destroyed the aforesaid warehouses, which had been used by the militia as a work of defence and fortification, they being the only houses located on the shore of the river and which furnished an entrenchment behind which our forces obtained protection and in consequence of their use and occupation by troops as a military post or depot, I believe may be ascribed its destruction by the enemy, for as soon as troops were forced to retreat from the warehouses in consequence of superior numbers and ordnance of the enemy, they come and conflagrated said warehouses and their contents. This deponent further states that the warehouses as aforesaid were occupied by our troops from the extreme necessity of the case; at this assailable point there were no other

means to which our troops could resort for protection or occupation, but the said warehouses ; they were the only defences then available, and hence the necessity of occupation and planting our cannon in such a manner as to render it effective and to cover our troops from the fire of the enemy. Captain Naylor, who commanded the company, died several years ago, as well as other officers.

Sworn before me the 13th day of April, in the year 1850.

CLEMENT R. CONNUCH,

Justice of the Peace in and for Prince George's County, Md.

For the character and standing of Mr. Baden, who made the foregoing affidavit, I beg to refer to the Hon. Mr. Pratt, senator from the State of Maryland.

Mc. C. YOUNG,

Attorney for Claimants.

APRIL, 1850.

Affidavit of George Washington Biscoe.

WASHINGTON, February 27, 1832.

DEAR SIR : The statement which I am about to make, if necessary, I can verify on oath. I now do so on honor as brigade commander of the militia of Maryland, and an officer holding a commission of surveyor and inspector of the revenue under the general government. You request information on the subject of the defence of Magruder's warehouse, in June, 1814, by a detachment of militia acting under my orders. In reply I have to state, that the captain in command reported to me his rencounter with the enemy at that place ; he stated, that on the near approach of the British barges (said to be) under the command of Commodore Barry and Colonel Malcomb of marines, he posted his men behind the warehouses, situated within thirty yards of the shore, and that so soon as his fire of musketry could be deemed effectual he commenced, and continued to do so for an hour or two being under cover of the warehouses ; finally, his ammunition being expended and he was compelled to retire, the enemy then landed and set fire to the warehouses, which were burned.

I am aware that you sustained considerable loss in tobacco there and elsewhere on the Patuxent river, from the circumstance of your having purchased of me more than one hundred hogsheads, which, with the exception of a few, (say to the best of my recollection,) four or five of the warehouses here, were either burnt in Magruder's warehouses at the period above stated, or was carried away by the enemy on their retreat from the city of Washington to the shipping at this place. At one period I used the tobacco in the warehouses here for military purposes, a part of which, I recollect, was your property, (having sold it to you.)

Wishing you success in your appeal to Congress, I remain, truly, your obedient servant,

GEO. WASHINGTON BISCOE.

CHARLES J. CATLETT, Esq.

Affidavit of Jesse Selby.

WASHINGTON COUNTY, D. C., to wit:

On the 20th day of December, 1833, personally appears before me, the subscriber, a justice of the peace in and for said county, Jesse Shelby, and makes oath on the Holy Evangely of Almighty God, that he was stationed at Magruder's warehouse, on the Patuxent river, in June, 1814, in a company of Maryland militia, commanded by Captain Joshua Naylor, and that the said warehouse, he verily believes, was burnt in consequence of said company being there, and the said werehouse affording protection, and being occupied by them.

This deponent further states that Captain Naylor died in the year 1825.

Sworn before

HENRY WENTZ, J. P.

TREASURY DEPARTMENT,

Third Auditor's Office, November 30, 1850.

The foregoing is a true copy of the original on file in this office.

JNO. S. GALLAHER.

Auditor.

These statements, meagre as they are in many respects, leave but little doubt as to the main facts involved.

Magruder's warehouse was a common depository for the planters of that vicinity, and when destroyed it probably contained the property of many individuals. Catlett and the widow of Swan have heretofore appealed to Congress for payment for tobacco destroyed in it.

When the British ascended the Patuxent, the Maryland militia were assembled in force to annoy or arrest their progress. The captain of a company of militia, for this purpose, posted his men, upon his own responsibility, "*behind the warehouse, situated within thirty yards of the shore, and so soon as his fire of musketry could be deemed effectual, he commenced, and continued to do so for an hour or two, being under cover of the warehouse. Finally, the ammunition being expended, he was compelled to retire; the enemy then landed and set fire to the warehouses, which were burned.*"

This statement, probably the most accurate and reliable of all that have been made upon this point, is given by General Biscoe, under whose orders the militia acted on this occasion, and to whom the officer in command reported the affair at Magruder's warehouse; and by no latitude of construction can the destruction of the warehouse or tobacco be brought within the provisions of the acts of 1816 and 1817.

A party of militia hastily posted themselves, by order of their captain, behind the warehouse, and fired upon the advancing British "for an hour or two," and then retreated. This is the sole foundation for the allegation (upon which this claim rests) that the United States took possession and military occupation of it, and thereby induced the British to burn it. Had the British pursued this retreating party, it would probably have made a stand and delivered a fire upon the advancing enemy from behind every house or other cover on

their route, and they would hardly be regarded, in such case, as having taken military possession or occupation of them. It is evident that a mere temporary shelter, and not a military occupation, was designed by the militia company; for it is not at all probable that this single company was expected to *hold* the position behind the warehouse against a "large force of marines and seamen advancing in eleven barges."

It is not pretended that this warehouse was ever occupied as a place of deposit for military or naval stores, or as barracks for the military forces of the United States, either by or without an order of an officer or agent of the United States; and such occupation is utterly disproved by the testimony.

The opinion is expressed by some of the witnesses who testify as to its destruction, that it would not have been burned had not the militia company fired upon the enemy from behind it. This opinion may, or may not, be correct; it is immaterial to the decision of the question; but it must not be forgotten that the occupation of the Patuxent, by the British, was marked by a total disregard of the usages of war among civilized nations; that private houses were plundered, private property was taken or destroyed, and that nearly their whole operations on the Patuxent were exclusively against private property. They carried away large quantities of tobacco—all they could find, in fact; and the proof in this very case shows that on their return from Washington they carried off the tobacco found in the warehouse at Nottingham, eight miles above Magruder's.

The following extract from Niles' Register, published at the time, will show how their military operations were regarded:

Extract from Niles' Weekly Register of June 25, 1814, vol. 6, page 279.

FROM THE PATUXENT.

"Commodore Barney, with his flotilla, remains blockaded in St. Leonord's creek (emptying into the Patuxent,) about which is collected nearly the whole force of the enemy in the waters of the Chesapeake. Foiled in every attempt to destroy him, and suffering severely in each attack, they have resorted to that species of warfare that *Englishmen* generally succeed in remarkably well; which is, to ravage the plantations, burn the houses, and carry off the spoils. It is stated that they have carried off or destroyed between 3,000 and 4,000 hogsheads of tobacco, which Messrs. Cockburn & Co. are shipping for Europe, where it bears a great price. The number of houses destroyed is not ascertained; those they suffered to remain were wantonly injured; the doors and windows broken, &c., as well as all the furniture, ripping open the feather beds and dispersing the feathers to the winds, &c. The neighboring militia appear to have been badly provided, and little disposed to protect their property."

From Niles' Weekly Register, August 27, 1814, vol. 6, p. 444.

The following terms were offered to the city of Alexandria, on the acceptance of which the city should not be destroyed :

"Art. 1. All naval and ordnance stores, public or private, must be immediately delivered up.

"Art. 2. Possession will be immediately taken of all the shipping, and their furniture must be sent on board by the owners without delay.

"Art. 3. the vessels that have been sunk must be delivered up in the state they were, on the 19th August, the day of the squadron passing the Kettle Bottoms.

"Art. 4. Merchandise of every description must be instantly delivered up, and to prevent any irregularity that might be committed in its embarkation, the merchants have it in their option to load the vessels employed for that purpose, when they shall be towed off by us.

"Art. 5. All merchandise that has been removed from Alexandria since the 19th inst. is to be included in the above articles."

Extract from "Ingersoll's History of the Late War," vol. 2, p. 159.

"Desirous, wherever it can be done, of making the enemy tell the story, I quote from an English officer, who was with Ross' army, the following account of the spirit and manner in which the expedition was conducted.

" 'Cruising about in every direction, they threatened the whole line of coast, from the entrance to the very bend of the bay, and thus kept the Americans in a constant state of alarm. Whenever a favorable opportunity presented itself, parties landed, plundered or destroyed the government stores, laid towns and districts under contribution, and brought off all the shipping which could be reached. In a word, the hostilities carried on in the Chesapeake resembled the expedition of the ancient Danes against Great Britain, rather than a modern war between civilized nations.' "

Extract from the "Memoir of J. Barney," page 258.

"After the severe chastisement inflicted upon them for their last attempt, the enemy made no further effort to disturb the tranquility of the flotilla, but contented themselves with converting the siege into a blockade, by mooring in the mouth of the creek, where they were soon reinforced by another frigate.

"Having come to this resolution, they turned their attention to the plunder of the surrounding country, in which frequent experience had given them an unenviable expertness. Tobacco, slaves, farm

stock of all kinds, and household furniture became the objects of their daily enterprises, and possession of them in large quantities was the reward of their honorable achievements. What they could not conveniently carry away, they destroyed by burning. Unarmed, unoffending citizens were taken from their very beds, sometimes with beds and all, and carried on board their ships, from which many of them were not released until the close of the war."

The idea that the British respected private property, and took or destroyed it only when it had been occupied by the forces of the United States finds no support in the history of the times. Nor have they ever respected private property in their military operations against an enemy; whereas, our own country, in this respect, has set an example which finds no parallel in the whole military history of Great Britain.

Your committee, apprised of the fact that the recognition of the liability of this government to pay for losses sustained under the circumstances involved in this memorial, would at once revive stale and forgotten demands to an immense amount; that it would be going far beyond the most latitudenarian construction which the acts of 1816 and 1817 have ever received; that it would but afford the most liberal encouragement to a public enemy to destroy private property with the view of our paying for it, have given to this case their careful consideration; and they can see no equity in the memorialist's claim, not the shadow of liability of the United States to pay it; and that its payment would, in their judgment, amount to a gratuity as unjustifiable as it would be unauthorized.

And your committee ask to be discharged from its further consideration.

To the honorable the Senate and House of Representatives in Congress assembled:

The memorial of Thomas Rinaldo Johnson, administrator of Rinaldo Johnson, and Sarah A. Nuttrill, administratrix of Ann E. Johnson, respectfully sheweth: That those they represent were proprietors of upwards of one hundred hogsheads of tobacco, which were stored in the Maryland inspection warehouse at Magruder's, in the said State, in the year 1814. That at the time said tobacco was stored there in June, 1814, or thereabouts, the British troops or sailors, on a predatory excursion, were fired upon by the American troops stationed in or about said Magruder's warehouse; that after the ammunition of the American forces was exhausted they retreated, and the British forces immediately after landed and burned said warehouse and its contents, including the tobacco belonging to your memorialists, or rather to the estates they represent.

Your memorialists refer for proof of their claim to the annexed affidavits and reports of committees of Congress, by which it will be shown the quantity of tobacco belonging to them, which was stored in said warehouse at the time of its destruction, and also that the burning of the same was in consequence of its occupation by the American troops.

Your memorialists therefore pray that they may be compensated for the loss they have thus sustained, as others have under similar circumstances been compensated ; and they will ever pray, &c.

Respectfully submitted.

THOMAS RINALDO JOHNSON,
Administrator of Rinaldo Johnson, for himself, and for
Mrs. Ann Nuttrill, Administratrix of Ann E. Johnson.

DECEMBER, 1849.

To the honorable the Senate and House of Representatives of the United States :

The amendatory memorial of the undersigned, and on behalf of Mrs. Sally Ann Nuttril, administratrix of Ann E. Johnson, respectfully sheweth : That your petitioners heretofore presented their claim for relief to your honorable body at the last session of Congress. Since then it has been intimated to the undersigned that doubts as to the validity of the claim might be raised on account of the long period which has elapsed since the loss occurred, and the presentation of his and her late memorial. The undersigned can easily remove such an impression, if it exist. By reference to the records in the Department of State, it can be seen that the late Hon. Joseph Kent filed, many years since, under the act of 2d March, 1827, amongst others, a claim for the tobacco for which your memorialist now claims remuneration. Such claims were then not allowed, but of late years they have been by Congress. Your memorialist, on learning this latter fact, immediately, after he could with propriety do so, (for his letters of administration were granted in 1847, as appears by certificate annexed,) and as soon as he could obtain the testimony which he could consider efficient, he then presented his claim. There being some difficulty as to the proper ownership of the tobacco, which is yet unsettled between the estates of Mrs. Ann E. Johnson and Rinaldo Johnson ; hence it is that the claims of both have been presented together. If Congress should take favorable action on the claim, it cannot be doubted but that the proper department which may be authorized to settle it, will direct the payment to those who may be justly entitled to receive what Congress may allow.

In addition to former papers heretofore filed in support of this claim, the undersigned accompanies this with a copy of the deposition of Jesse Selby, now on file in the Third Auditor's office, and his letters of administration on the estate of Rinaldo Johnson.

All of which is respectfully submitted.

THOMAS RINALDO JOHNSON,
Administrator of Rinaldo Johnson, and agent for
Mrs. Sally Ann Nuttrill, administratrix of Ann E. Johnson.

UNITED STATES OF AMERICA, }
District of Columbia, } *scd.*

On this seventh day of December personally appears before the subscriber, a justice of the peace in and for the county aforesaid, Thomas Rinaldo Johnson, and makes oath that the facts as stated by him in the memorial aforesaid, as to the presentation of the original thereof to Congress, are true, and he (the said Thomas Rinaldo Johnson) makes oath that, to the best of his belief, the other facts stated by him are true, as set forth above.

Sworn to and subscribed before

JOHN D. CLARK,
Justice of the Peace.